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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,235	06/18/2007	Ulrich Hansenberger	30475-00001	3844
33772 7590 07/30/2010 MCDONALD HOPKINS LLC 600 Superior Avenue, East Suite 2100 CLEVELAND, OH 44114-2653				
EXAMINER				
LOUIS, LATOYA M				
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3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/596,235

Applicant(s)

HANSENBERGER ET AL.

Examiner

LaToya Louis

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2010.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 21-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 05 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SI/08)
4) ☐ Interview Summary (PTO-413)
5) ☐ Notice of Interval Patent Application
6) ☐ Other: _____
Paper No(s)/Mail Date _____

DETAILED ACTION

1. This office action is responsive to the amendment filed 4/29/2010. As per the amendment, claims 1-20 have been cancelled and claims 21-35 have been added. Thus claims 21-35 are currently pending.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the drive unit which enables the platform to move in the inventive ways as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The amendment filed 4/29/2010 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: “restricting motion of the platform to these two dimensions” stated in [0023] line 10.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 21-27, 31, and 34-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claims 21 and 31, it is not clear how the drive unit is capable of the moving the platform in the claimed ways i.e. in horizontal and vertical directions and in a circular motion about an axis perpendicular to the base plate. It is not clear from the figures how the drive unit would be able to perform these functions because the drive unit and the bearings which connect the drive unit to the platform are not shown. Therefore one of ordinary skill in the art could not practice the invention as claimed without undue experimentation.

Claims 28-30, 32, and 33 are rejected for their dependency on a rejected claim.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 21-30 and 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 21, the limitation “move the platform in a first dimension parallel to the base plate and a second dimension” on lines 5 and 6 is not clear since a dimension is a measure of spatial extent. Applicant should replace “dimension” with --direction-- to clarify the claim.

Regarding claim 28, the limitation “the base” lacks antecedent basis.

Regarding claim 35, the limitation “the line of action of the muscle” lacks antecedent basis. In addition it is not clear what is meant by “the line of action”.

Claims 22-27 and 29-30 are rejected for their dependency on a rejected claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 21-25 and 27-35 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnson et al. (6,620,117).

Regarding claim 21, Johnson teaches in fig. 1 a biomechanical stimulation device (10) comprising: a base plate (12); a drive unit (16) connected to the base plate; a platform (14) connected to the drive unit; and wherein the drive unit (16) is configured to move the platform in a first direction substantially parallel to the base plate (col. 6 lines 35-40, 60-64) and a second direction substantially perpendicular to the base plate (col. 5 lines 58-60, col. 6 lines 50-52), such that the platform moves within a two-dimensional plane substantially perpendicular to the base plate (col. 5 lines 38-39, col. 9 lines 13-23).

Regarding claim 22, Johnson discloses that the drive unit is configured to move the platform in a circular motion (col. 4 lines 60-63, col. 7 lines 38-46 disclose that the platform moves in a vertical and/or horizontal orbit).

Regarding claim 24, Johnson discloses that the circular motion is about an axis that is parallel to the base plate (col. 5 lines 58-60 and col. 9 lines 13-23 disclose that the platform rapidly vibrates up and down and col. 4 lines 60-63 disclose that the vertical vibration could be a rapid orbital motion about an axis. Thus the orbital up and down motion of the platform is a motion about an axis parallel to the base plate. In addition, the simultaneous horizontal orbital motion of the platform combined with the vertical up and down motion of the platform, as disclosed in col. 6 lines 23-41 and 60-67 through col. 7 lines 1-2, would also rotate the platform about an axis parallel to the base plate).

Regarding claim 25, Johnson teaches from figs. 2 and 3 that the platform remains substantially parallel to the base plate during movement of the platform (col. 6 lines 23-41, col. 5 lines 40-41).

Regarding claim 23, Johnson discloses that the drive unit is configured to move the

platform in an elliptical motion (col. 4 lines 60-63, col. 7 lines 38-46 disclose that the platform vibrates rapidly up and down about an orbit. Thus it can be deduced that the platform moves elliptically).

Regarding claim 27, Johnson discloses a control unit (20) for controlling frequencies of the platform movement (col. 5 line 35, col. 2 lines 10-12).

Regarding claim 28, Johnson teaches a pedestal (18) connected to the base plate (12).

Regarding claim 29, Johnson teaches wheels (sprocket wheels 36 and 38 as wheels) connected to the pedestal.

Regarding claim 30, Johnson teaches in fig. 6a a plurality of openings in the platform (col. 9 lines 30-35 disclose drive block to engage with inner walls of the platform. As shown there are thus upper and lower openings into the platform to gain access to the interior walls of the platform from the underside).

Regarding claim 31, Johnson discloses a method of biomechanical muscle stimulation comprising: applying a body part muscle to the platform (col. 10 lines 1-10), moving the platform within a two-dimensional plane substantially perpendicular to the base (col. 8 lines 7-22); and wherein movement of the platform is driven by a drive unit (16, 40, 48) connected to the base (12).

Regarding claim 32, Johnson discloses that applying a body part to the platform includes applying a leg muscle to said platform (col. 11 lines 1-9 disclose treating the muscles of around the knee and col. 11 lines 64-65 disclose placing a limb with the muscles or joints to be treated in

contact with the platform. In addition, when a user stands on the platform, the leg muscles will also be in indirect contact with platform to receive the vibration treatment).

Regarding claim 33, Johnson discloses applying a body part to said platform includes applying an arm muscle to said platform (col. 11 lines 20-30 disclose treating a user's muscles in the arms and col. 11 lines 64-65 disclose placing the limb with the muscles to be treated in contact with the platform. In addition, when a user's grasps the rails, the arms will be in contact with the vibrational forces of the platform).

Regarding claim 35, as best understood, Johnson discloses that the body part muscle is moved in the direction of the line of action of the muscle by said two-dimensional movement of the platform (col. 10 lines 1-35 disclose that a user's body is vibrated in the direction of the movement of the platform).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 26 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of McLeod et al. (5,273,028).

Regarding claims 26 and 34, Johnson discloses adjusting the frequency of vibration of the platform (col. 8 lines 7-22) but does not specifically disclose that the drive unit moves said platform at a frequency between 5 Hz and 35 Hz. However, McLeod teaches a vibrational frequency encompassing 5 Hz and 35 Hz (col. 2 line 23, col. 3 lines 1-10). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the platform and method of Johnson with the vibrational frequency of 5 Hz and 35 Hz as taught by McLeod to provide an optimal frequency for promoting growth and healing of bone tissue as taught by McLeod in col. 2 lines 21-22).

Response to Arguments

13. Applicant's arguments with respect to claims 1-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Melby (4,705,028) discloses a mechanical jogger.

Carey et al. (6,176,817 B1) discloses a horizontally and vertically rotatable platform.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya Louis whose telephone number is (571) 270-5337. The examiner can normally be reached on Monday-Friday, 8:30am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LaToya Louis/
Examiner, Art Unit 3771
7/16/2010

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771